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### Bridging the Gap: Rethinking Outreach for Greater Access to Justice

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## BRIDGING THE GAP: RETHINKING OUTREACH FOR GREATER ACCESS TO JUSTICE

Rebecca L. Sandefur\*

### I. INTRODUCTION

The often cited “justice gap” is the difference between the number of people experiencing problems that could benefit from some form of legal assistance and the number who receive it.<sup>1</sup> The actual size of the gap—the true magnitude of the difference—is not known, and indeed it is not knowable with information presently available.<sup>2</sup> Nonetheless, it is unquestionable that many people around the country, of all genders, ages, religions, races and ethnicities, and at *all* income levels experience justice problems for which they receive no assistance from attorneys.<sup>3</sup>

Typically, the explanation suggested for the justice gap is cost. This money story comes in two varieties. The first variety observes that, in the United States, legal aid is scandalously underfunded.<sup>4</sup> In comparison with peer nations, the American civil legal aid system is among the stingiest, extending only to a small share of the population and a limited set of justice problems, and serving these millions of people with millions of problems by means of only a few thousand attorneys.<sup>5</sup> The federal Legal Services Corporation, the central funder of civil legal aid in the U.S. justice system, reports that the programs it funds must each year turn away at least as many eligible

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1. REBECCA L. SANDEFUR, A.B.A. COMM’N ON THE FUTURE OF THE LEGAL PROFESSION, *WHAT WE KNOW AND NEED TO KNOW ABOUT THE LEGAL NEEDS OF THE PUBLIC* 4 (2015).

2. Not only is it not known, it is not a simple question. *See id.* at 4–5.

3. *Id.* at 3.

4. 3 EARL JOHNSON, JR., *TO ESTABLISH JUSTICE FOR ALL: THE PAST AND FUTURE OF CIVIL LEGAL AID IN THE UNITED STATES* 873–80 (2014); *See generally* Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *FORDHAM INT’L L.J.* S83–S110 (2000).

5. *See, e.g.*, Francis Regan, *Why Do Legal Aid Services Vary Between Societies? Re-Examining the Impact of Welfare States and Legal Families*, in *THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES* 179–201 (Francis Regan, Alan Paterson, Tamara Goriely & Don Fleming eds., 1999); Rebecca L. Sandefur, *Lawyers’ Pro Bono Service and American-Style Civil Legal Assistance*, 41 *LAW & SOC’Y REV.* 79, 79–112 (2007); Rebecca L. Sandefur, *Lawyers’ Pro Bono Service and Market-Reliant Legal Aid*, in *PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION* 95–113 (Robert Granfield & Lynn Mather eds., 2009).

clients as they serve because they lack the resources necessary to serve them.<sup>6</sup>

The second money story focuses on the private market for legal services and asserts that lawyers are too expensive for ordinary people to afford.<sup>7</sup> Some legal services consumed by ordinary people are indeed very expensive—contested divorces are a prime example—but this is not true for all of the kinds of justiciable events<sup>8</sup> that ordinary people typically confront.<sup>9</sup> Surveys of Americans find that most of those who have actually used lawyers' services are in fact happy with what they paid.<sup>10</sup> Surveys that ask why people with justice problems do not seek assistance for them find that people cite cost as an explanation for less than a fifth of the problems they experience.<sup>11</sup> Clearly, something else besides cost is at play here. Money plays a prominent role in the stories lawyers tell themselves about why people are not calling them, but a much smaller role in the stories people are telling about why they do not turn to lawyers. There is obviously another gap to be bridged.

A vast gulf of perception and understanding separates the public from the profession. At least as important as money in getting from where we are now to something approaching a "100% access" goal for civil legal assistance<sup>12</sup> is a change in thinking that will guide new strategies for making

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6. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2009), available at [http://www.lsc.gov/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

7. See generally Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129 (2009) (discussing the American legal market and comparing it to legal markets in other countries).

8. HAZEL GENN ET AL., PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW 12 (1999).

9. Rebecca L. Sandefur, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, in MIDDLE INCOME ACCESS TO JUSTICE 222 (Anthony Duggan, Lorne Sossin, & Michael Trebilcock eds., 2012).

10. Leo J. Shapiro & Associates, *Public Perceptions of Lawyers: Consumer Research Findings*, 2002 A.B.A. SEC. LITIG. 20.

11. The Community Needs and Services Study, conducted in 2013, finds that among problems not taken to any formal third party for assistance, cost is an explanation in only 17% of cases. See REBECCA L. SANDEFUR, AM. B. FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 13 (2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2478040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478040). The American Bar Association's survey of the legal needs of the moderate-income public, conducted in 1994, found that, for only 6% of reported justice problems did people say they did not seek a lawyer's assistance because of concerns about cost. See Sandefur, *supra* note 9, at 238 fig.7.3.

12. James J. Sandman, *Rethinking Access to Justice* (June 20, 2014) (transcript available at <http://www.lsc.gov/rethinking-access-justice-james-j-sandman-hawaii-access-justice-conference>).

connections between the public and the profession. While it may be tempting to believe that this gap is created by wrong thinking on the part of the public, more constructive action is powered by recognizing important sources of the gap in rigid and myopic thinking on the part of the profession. These two groups, the profession and the public, in many instances see different landscapes of actionable events and speak different languages about them. Connecting services with people who can use them requires a multi-dimensional understanding of access, one that goes beyond cost to consider other factors. This shift in thinking could not only expand the reach of legal aid, but also open up currently untapped markets for private legal services.

This paper reviews findings from recent studies of how ordinary Americans think about and handle their civil-justice problems, analyzing these findings in search of insights into why people do not usually take these problems to lawyers or to courts. Building on this research, this paper identifies three principles that should be present in future efforts to connect people who may need services with the services they need. Each principle is illustrated with examples of already-existing programs or practices that employ it.

To summarize:

- Americans do not take their justiciable problems to lawyers because they do not consider these problems to be legal, frequently feel that they are quite capable of handling these problems on their own, and often do not believe that anything can be done about them—by anyone.
  - Americans' descriptions of how they do handle their justice problems reveal that the kind of assistance that they would appreciate would likely have three qualities: it would be **timely**, appearing at a moment when they recognize that they have a problem; it would be **targeted**, specific to their actual needs; and it would be **trustworthy**, coming from sources that they believe are responsible and working in their good interests.
  - Some programs already exist that embody these qualities. Different kinds of problems and different populations will require different strategies.
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## II. UNDERSTANDING THE GAP

## A. How Americans Think About and Handle Justiciable Events

Many millions of Americans each year confront a special group of commonly-experienced problems with potentially wide-ranging and powerful impacts on core areas of life such as livelihood, shelter, the care and custody of minor children and dependent adults, neighborhood safety, and environmental conditions.<sup>13</sup> These are civil-justice problems: they raise civil legal issues, are potentially actionable under civil law, and have consequences shaped by civil law. At any given time in the United States, findings from civil-justice surveys suggest that well over one-hundred million people, members of every income, age, gender, race and ethnic group in society, are living with civil-justice problems, many involving basic human needs.<sup>14</sup> They hardly ever take these problems to lawyers or pursue them in court.<sup>15</sup> Americans' infamous litigiousness has many elements of myth.<sup>16</sup>

There is a puzzle here. Some of these civil-justice problems, if they go badly, can be catastrophic for the people who experience them—they can lose their homes, their jobs, custody of their children, or access to insurance, benefits, or pensions. The Community Needs and Services Study, a recent survey of a representative sample of American adults in a middle-sized, midwestern city, found that fully two thirds reported experiencing at least one civil-justice situation in the eighteen months prior to the survey.<sup>17</sup> For 47% of the situations people reported, they also reported at least one negative outcome that was a “part of” or a “result of” the situation, including

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13. See Sandefur, *supra* note 9, at 223; Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51, 56–59, 84 (2010).

14. Sandefur, *supra* note 9, at 223.

15. See Rebecca L. Sandefur, *Access to Civil Justice and Race, Class and Gender Inequality*, 34 ANN. REV. SOC. 339 (2008) (reviewing research demonstrating this finding across a range of methods and theoretical approaches).

16. See Marc S. Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 10 (1986). Alexis de Tocqueville observed long ago that “[t]here is hardly a political question in the United States which does not sooner or later turn into a judicial one.” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA AND TWO ESSAYS ON AMERICA* 315 (Gerald E. Bevens trans., Penguin Books 2003). And, indeed, policy questions that are resolved in the United States through litigation are handled in other ways in other nations. However, when one looks at the ordinary business of U.S. courts, much of their business is businesses suing each other, see generally ROBERT C. LAFOUNTAIN ET AL., NAT’L CTR. FOR STATE COURTS, *EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2008 STATE COURT CASELOADS* (2010); Terence Dunworth & Joel Rogers, *Corporations in Court: Big Business Litigation in U.S. Federal Courts, 1971–1991*, 21 LAW AND SOC. INQUIRY 497 (1996), and traffic cases, see VICTOR E. FLANGO & THOMAS M. CLARKE, *REIMAGINING COURTS: A DESIGN FOR THE TWENTY-FIRST CENTURY* 27–32 (2015).

17. SANDEFUR, *supra* note 11, at 6–7.

material consequences like loss of income or damage to their physical or mental health, and psychological or emotional consequences like lost confidence or fear—even violence or threats of violence.<sup>18</sup> These situations are potentially highly impactful, yet people usually handle them on their own or with the advice of family and friends, turning to third parties—including, but not only, lawyers—for only a bit over a fifth (23%) of the justice situations they report.<sup>19</sup>

One clue to the puzzle lies in how people understand the situations they confront. Perhaps most importantly, people often describe these situations using terms that suggest that they may not see them as actionable, in the sense of being something one would try to do something about or change.<sup>20</sup> The Community Needs and Services Study found that the most common descriptors people used characterized the situations they reported as “bad luck/part of life” or “part of God’s plan”: over half (56%) of situations were described in one of these two ways.<sup>21</sup> If civil-justice situations are understood as things that simply happen, or are ordained to happen by a power that orders the world, trying to change them may not seem like the proper response. For another notable share of the situations they reported, people chose descriptors indicating that they perhaps believed it would not be appropriate for third parties outside their immediate social world to become involved: 21% of situations were described as “private (i.e., not something to involve others with)” or “family/community (i.e., something best dealt with within the family/community).”<sup>22</sup> For only 9% of the situations they reported did people describe the situation as being in whole or in part “legal.”<sup>23</sup> This “alegality”<sup>24</sup> likely explains part of their tendency not to turn to law: in the Community Needs and Services Study, people either considered lawyers or actually went to lawyers with 39% of the situations they understood as “legal,” but with only 14% of those they did not.<sup>25</sup>

A second clue to the puzzle lies in how people understand their decisions to seek help or not when they face problems. For situations in which people reported that they did not seek assistance from *any* third party outside of their own social network, the Community Needs and Services Study asked people why they did not do so.<sup>26</sup> The most common reason they gave,

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18. *Id.* at 9, 10 fig.4.

19. *Id.* at 12 fig.5.

20. *Id.* at 14.

21. *Id.*

22. *Id.*

23. SANDEFUR, *supra* note 11, at 14.

24. Sandefur, *supra* note 9, at 232–39.

25. SANDEFUR, *supra* note 11, at 14.

26. *Id.* at 12–13.

for 46% of situations, was that they had no need for advice.<sup>27</sup> The second most common reason was that advice “wouldn’t make any difference.”<sup>28</sup> Both of these responses suggest that people often feel that they understand the situations they encounter and believe they know what is possible and not possible in handling them. In a sense, they are telling us “I’ve got this.” Often, they may be right: they may well understand the possibilities and their options. Indeed, sometimes they are probably right that there is not much that anyone can do to change the situation.

Not every failure to turn to law is a failure for the rule of law, either in the sense of being a mistake on the individual’s part or a problem for law or society. People sometimes want to maintain control of their own problems and can certainly sometimes handle them quite successfully. Whether our standard is the individual receiving the best outcome she can—given the law and the facts—or society enjoying the benefits of a well-resolved justice problem, these situations turn out fine in any number of instances without formal legal intervention. However, as a society there are probably circumstances where people are not getting assistance even though we would want them to.

The challenge for effective outreach is connecting with the subset of civil-justice situations that we decide we would rather not have people handle on their own, because we sincerely think it will be bad for them or society, or for both, if they do so. People are not always good judges of what situations they need help with. That is the nature of professional expertise: lay people come to professionals to “identify and treat problems that [lay people] do not know how to solve and may not even know they confront.”<sup>29</sup>

One way to uncover the kinds of circumstances for which people may not seek assistance, but society might want to encourage them to do so, is to examine Americans’ own descriptions of the justice problems they encounter. This approach allows the people who experience problems to reveal, through their own words, what they themselves experience as troubling, as helpful, and as important.<sup>30</sup> The account below comes from one of a series of focus groups conducted in two different middle-sized cities in the Midwest region of the United States during the mid-2000s.<sup>31</sup> In these groups, people were invited to come into a library or community center and discuss

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27. *Id.*

28. *Id.*

29. Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers’ Impact*, 80 AM. SOC. REV. 909, 912 (2015).

30. See Sandefur, *supra* note 9, at 233; Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 118–22 (Pascoe Pleasence, Alexy Buck & Nigel Balmer eds., 2007).

31. See Sandefur, *supra* note 9, at 233.

“challenges” facing Americans today. The first activity of the focus group was to go around the room and tell a story about a “challenge.”<sup>32</sup>

Across the accounts of challenges, told by people from different walks of life and a range of income levels, two characteristics emerged: many of the problems described were justiciable; and people typically did not talk about these problems as having legal aspects.<sup>33</sup> A woman’s description of her situation involving social security death benefits illustrates:

When I was pregnant with my oldest one, her natural father passed away. And when I went to social security and other agencies, social security told me I could not receive [death] benefits because it was not common knowledge that he was the father of my child, because he did not tell anybody . . . .

I was denied benefits. I don’t know what they call it, you know, like where you get money from the government to help live on and stuff like that . . . . I was denied public aid because I did have a full-time job and my numbers with my gross was less than \$100 above . . . . So my daughter is growing up without knowing that I had help . . . .

So I just pretty much let it go and I had people telling me, “Well, why don’t you go get a blood test?” Well, I can’t, because he was cremated. “Well, why don’t you go to his parents?” I can’t, because he was adopted. So I was a single mother with no help with a [sic] \$8 an hour full-time job. And that’s what I went through.<sup>34</sup>

This account is striking in a number of respects. First, the situation is actionable. If the account is accurate with respect to the facts, some kind of formal action to try to secure the benefit would be considered desirable by most observers. The whole point of survivors’ benefits is to support people who have lost a source of income through a death, to protect them from poverty, its miseries, and its attendant social costs.<sup>35</sup> Just as society would arguably benefit from this family’s attachment to this entitlement, this woman and her daughter would be better off if they received the benefit and its supplement to a single mother’s income from low-wage employment. Both the people directly involved and society as a whole would be better off if some kind of intervention occurred that assisted mother and daughter in handling this justiciable situation. Second, means of acting already exist.<sup>36</sup> A

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32. *Id.*

33. *Id.*

34. *Id.* at 234.

35. SOC. SEC. ADMIN., SOCIAL SECURITY: SURVIVORS BENEFITS 4 (2015), available at <http://www.ssa.gov/pubs/EN-05-10084.pdf>.

36. *Representing Social Security Claimants*, SOC. SEC. ADMIN., <http://www.ssa.gov/representation/index.htm> (last visited May 17, 2015).



segment of the legal profession specializes in this work, and a specialized fee structure exists to make it easier for people to purchase lawyers' services for precisely these kinds of justice problems.<sup>37</sup> Third, just as seen above in the survey data, here a person's own words reveal that formal third parties like lawyers are not invited in to the situation: the main sources of assistance that this person reports are the "people" in her immediate social environment.<sup>38</sup> Fourth, neither the person at the core of the situation, nor the people she consults with, appear to have considered or suggested lawyers or legal advice.

If we want to change how this scenario and others like it play out, the challenge for outreach is finding a way to connect with people facing these kinds of situations. A key part of making that connection is seeking to understand what people want and need in these situations.

B. What Do People Want and Need? They Want and Need Timely, Targeted, Trustworthy Help.

Clear in the account just presented is the person's wish for help; indeed, "help" is the most common word she uses in her description of her experiences with the problem.<sup>39</sup> Research employing a range of methodologies in a variety of common-law, English-speaking countries is beginning to reveal what kinds of help people find most useful and accessible when they face civil-justice situations. One way to see these qualities clearly—and, in the example to follow, starkly—is to once again allow people to describe their own experiences. Whereas the previous account was of a problem and an unmet need for help, in the account below we see the experience of receiving help. Another woman in a different focus group related the following:

[My son has Asperger's syndrome and] . . . there were a lot of problems getting him . . . to straighten out in school. They had him in the wrong type of setting, you know. Because I had to be in two places at one time [dealing with the school and with my son], I had to stop working, and I couldn't, you know, keep up my bills and my house note.

My aunt, she paid my mortgage for nine months of the year that I couldn't pay. Then the house went in foreclosure the first time.

The guy that came to my house the first day of January 2003, and handed me my . . . foreclosure summons, he was the most important person that I met and talked to about this foreclosure information. He was like a fa-

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37. *Id.*

38. See Sandefur, *supra* note 9, at 233.

39. See *id.* at 234.

ther figure to me. He said, “don’t get nervous, don’t get scared” . . . . He said, “I’ve seen a lot of people I’ve handed this out to, I walk past their houses a year later and they’re in their house still.” He said, . . . “every Tom, Dick and Harry is going to come at your door trying to talk to you about, ‘Oh, I can do this, I can do that’.” He says, “Don’t listen to them. They’re snakes in the grass, and they’re just going to steal the house from under you.” That was the most important information he gave me.<sup>40</sup>

Here we observe a situation in which someone receives help. Perhaps surprising is the source of help. This person receives advice about how to handle foreclosure from the foreclosing lender’s agent, the process server. The person describing her own experience spontaneously reports that the process server’s advice is “the most important information” she received.<sup>41</sup> Her description of his helpfulness gives some important insights. First, his advice shows up precisely at a moment when she recognizes that she has a problem. Second, the advice is directed at needs she actually has—including a need for reassurance, moral support, and information about what will happen next—provided via a warning about possible subsequent threats and advice about how to handle those threats. Third, he himself is seen as a trustworthy source of assistance, a “father figure.”<sup>42</sup> For her, these qualities were very helpful.

While the help comes from a source we may not expect, it exhibits qualities that are quite consistent with emerging empirical evidence about the characteristics of effective outreach: one might call them the three T’s of bridging the gap. Effective assistance is assistance that meets the following criteria:

- Targeted: specific to the person’s actual, concrete needs;
- Timely: appearing at a moment when the person recognizes that she has a problem;
- Trustworthy: coming from a source that the person trusts and believes is working in her good interests.

Research across a range of justice situations and jurisdictions highlights the importance of these qualities. A British study of legal advice for people facing debt problems found that such advice is more effective when service providers offer it “in trusted locations,” and when they offer the kinds of information people want: “advice that is targeted towards their own

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40. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, RESEARCHING LAW (Am. B. Found.), Fall 2014, at 11.

41. *Id.*

42. *Id.*

circumstances straightway.”<sup>43</sup> A recent report from the Law and Justice Foundation of New South Wales focused specifically on services for disadvantaged groups, such as poor people, immigrants, or racial minorities.<sup>44</sup> Reviewing a range of evidence from a variety of countries, the report’s authors concluded that legal assistance services for disadvantaged people should, as far as practicable, be

- targeted to those most in need
- joined-up with other services (non-legal and legal) likely to be needed
- timely to minimize the impact of problems and maximise utility of the service, and
- appropriate to the needs and capabilities of users.<sup>45</sup>

The insights here are critical and generative. Many creative possibilities could embody the three T’s. Given the diversity and creativity of the U.S. civil legal assistance community,<sup>46</sup> we unsurprisingly see here and there around the country that innovations incorporating the three T’s are already in operation. These strategies hold promise to bridge the gap.

### III. BRIDGING THE GAP

#### A. Co-Location

One technique for providing timely, targeted, trustworthy assistance is co-location: a means of creating what other jurisdictions sometimes term “joined-up” services.<sup>47</sup> In co-location strategies, multidisciplinary teams of service providers work together to provide a range of services that are *problem-focused*. They are problem-focused in the sense that they are designed around the problem their client confronts, rather than the problem a single profession understands—they are organized around life as experienced, not life as parsed by law books, medical texts, or policy manuals.

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43. ALEXY BUCK, TANIA TAM & CATE FISHER, LEGAL SERVS. RESEARCH CTR., PUTTING MONEY ADVICE WHERE THE NEED IS: EVALUATING THE POTENTIAL FOR ADVICE PROVISION IN DIFFERENT OUTREACH LOCATIONS 17 (2007).

44. Geoff Mulherin, *Foreward* to PASCOE PLEASANCE ET AL., LAW & JUSTICE FOUND. OF NEW S. WALES, RESHAPING LEGAL ASSISTANCE SERVICES: BUILDING ON THE EVIDENCE BASE iii (2014).

45. *Id.*

46. REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR FOUND., ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT v (2011).

47. See PLEASANCE ET AL., *supra* note 44, at 82–85.

Importantly, these strategies for connecting people with legal services do not require people to self-diagnose their situations as having legal aspects; rather, these strategies place the work of diagnosis elsewhere, with professionals. By being problem-focused, co-location strategies are able to deliver professional services to members of the public who may not realize that their problem could benefit from a given kind of professional help.

Three examples from the contemporary United States illustrate. Co-location projects involving law and a range of different kinds of human, social, and medical services exist in the United States today.<sup>48</sup> The most prominent example of co-location in the U.S. context is medical-legal partnerships.<sup>49</sup> According to the National Center for Medical Legal Partnerships, as of 2014, thirty-six states hosted at least one example of this model, with nearly 300 hospitals, clinics, and medical schools partnered with almost 250 legal aid offices, law schools, and pro bono projects.<sup>50</sup> An intriguing illustration of the utility of this intervention concerns asthma treatment.<sup>51</sup> Asthma is often exacerbated by environmental toxins, such as those caused by pests like cockroaches and rats.<sup>52</sup> Pest infestations are often violations of rental agreements, housing law, or health codes.<sup>53</sup> When doctors and lawyers work together to treat the medical problem and the legal problems that exacerbate it, health outcomes and housing conditions can both improve.<sup>54</sup>

Another co-location model relies on the fact that people in trouble often seek solace and support from faith communities. In Tennessee, the State's Access to Justice Commission has worked with local faith groups, such as churches, mosques, and synagogues, and local legal providers, such as legal-aid offices, private law firms, and pro bono programs, to create the Tennessee Faith and Justice Alliance.<sup>55</sup> "The notion is to connect with people in need in a place they already go to seek help with a problem. That place is quite often their place of worship."<sup>56</sup> The form of the Alliance is a

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48. In a 2010–2011 state-by-state survey of how access to civil justice is provided in the United States, this was the most commonly identified type of co-location. See SANDEFUR & SMYTH, *supra* note 46, at 15.

49. *Id.*

50. NAT'L CTR. FOR MED. LEGAL P'SHIP, <http://www.medical-legalpartnership.org> (last visited Aug. 22, 2015).

51. See Mary O'Sullivan et al., *Environmental Improvements Brought by the Legal Interventions in the Homes of Poorly Controlled Inner-City Adult Asthmatic Patients: A Proof-of-Concept Study*, 49 J. ASTHMA 911, 913–16 (2012).

52. *Id.* at 911.

53. *Id.*

54. *Id.* at 913–16.

55. *Faith-Based Initiative*, TENN. FAITH & JUST. ALLIANCE, <http://www.justiceforalltn.com/i-can-help/faith-based-initiative> (last visited Mar. 14, 2015). I am grateful to James Sandman for bringing this program to my attention.

56. *Id.*

set of local referral networks.<sup>57</sup> Legal providers educate faith workers about the legal aspects of the problems their members present and offer themselves as subsidized, pro bono, low bono, or fully market-based solutions.<sup>58</sup>

A third model of co-location similarly relies on where people go when they face a particular kind of trouble. With homelessness widespread in American cities, public libraries have become important sites of shelter, safety, and sanitation for homeless populations.<sup>59</sup> Libraries have, in some instances, struggled with how to handle the range of populations and uses of the public space they steward.<sup>60</sup> One response to the presence of homeless patrons has been to create programs serving these populations sited in public libraries.<sup>61</sup> Some programs provide information about available services while others engage in targeted outreach to homeless patrons and sometimes casework to connect people with benefits and services.<sup>62</sup>

Co-location strategies can work for some kinds of problems and some kinds of populations but not for all. Co-location strategies can work at connecting people with services when at least one of two conditions obtain. The first is that a particular kind of problem brings lots of people to the same place. For medical-legal partnerships, illnesses bring people to clinics and hospitals; for library outreach, having no home in which to sleep securely, relax safely, or bathe brings people to a free public space where they can do these things. The second condition is that a particular population goes to the same place when it faces any of a range of different kinds of problems. For the Faith and Justice Alliance, this is a place of worship.

However, for a wide range of situations, neither of these conditions obtains. Populations that are socially isolated or problems that do not tend to draw people to one place will often be missed by co-location strategies. For example, one population for whom co-located strategies are unlikely to bridge the gap is the homebound elderly, who are often unable to take themselves to the places where co-located services are. An example of a type of problem that does not bring people to one place is wage theft, which often

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57. *Id.*

58. *Id.*

59. *Extending Our Reach: Reducing Homelessness Through Library Engagement*, AM. LIBR. ASS'N, <http://www.ala.org/offices/extending-our-reach-reducing-homelessness-through-library-engagement> (last visited Sept. 5, 2015).

60. *Id.*

61. *Id.*

62. *Library Social Worker Helps Homeless Seeking Quiet Refuge*, PBS NEWSHOUR (Jan. 28, 2015, 6:20 PM), <http://www.pbs.org/newshour/bb/library-social-worker-helps-homeless-seeking-quiet-refuge>.

goes unrecognized by workers and which employers may think is unlikely to be discovered.<sup>63</sup>

Co-location strategies are also not always practicable. Launching a co-location strategy requires a sufficiently large population of providers to actually create the partnerships. Communities with low densities of providers may not have the human resources to launch co-location projects. Co-location is thus likely to be easier and more common in places with denser populations, and more difficult and less common in rural areas.<sup>64</sup> Co-location will work to bridge the gap in some situations, but not in others.

The challenges presented by different kinds of problems can become compounded by geography. The United States is a vast country. There are wide swathes of space with few people in them. The national average population density is about eighty-seven people per square mile, but states such as Alaska, Idaho, Montana, New Mexico, North and South Dakota, and Wyoming host fewer than twenty people per square mile.<sup>65</sup> About a fifth of the United States population lives in rural areas, away from major population centers.<sup>66</sup> Access to justice in rural areas raises unique challenges that go beyond a scarcity of providers and other resources.<sup>67</sup> Our quiver of strategies for bridging the gap must include those that can reach across space to engage with people's understandings of their problems and their behaviors as they confront them.

## B. Across the Distance

Reaching across distance to connect with people who are not being touched through physical outreach has been an element of service delivery for some time. One means of doing so is well established, if controversial, while the other is a more recent development, attended by both optimism and skepticism. As I will illustrate below, both advertising and internet-

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63. Steven Greenhouse, *More Workers Are Claiming 'Wage Theft'*, N.Y. TIMES (Aug. 31, 2014), <http://www.nytimes.com/2014/09/01/business/more-workers-are-claiming-wage-theft.html>.

64. For example, Georgia's "Health Law Partnership" is located in Atlanta, NAT'L CTR. FOR MED. LEGAL PARTNERSHIP, <http://www.medical-legalpartnership.org> (last visited Aug. 22, 2015), but similar partnerships are absent from Georgia's over 100 rural counties where over 1.6 million people reside, *108 Rural Counties*, GA. RURAL HEALTH ASS'N (2000), [http://grhainfo.org/Rural\\_Counties\\_less\\_than\\_35000\\_with\\_definition\\_for\\_Georgia.pdf](http://grhainfo.org/Rural_Counties_less_than_35000_with_definition_for_Georgia.pdf).

65. Table 14. *State Population—Rank, Percent Change, and Population Density: 1980 to 2010*, U.S. CENSUS BUREAU (2012), <https://www.census.gov/compendia/statab/2012/tables/12s0014.pdf>.

66. *2010 Census Urban Area Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/geo/reference/ua/uafacts.html> (last updated Feb. 9, 2015).

67. Lisa R. Pruitt & Bradley Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 481, 485–96 (2014).

based services present opportunities to enable outreach that is timely, targeted, and trustworthy.

### *I. Advertising*

The whole point of advertising is to shape thought in a way that can shape action, usually to encourage people to believe that they need or want something that a provider has to offer. One use of advertising can be to get people to conceptualize a specific kind of problem as something that could be acted on, that may have legal aspects, and that could be connected to assistance, whether in the form of lawyers or other kinds of services.<sup>68</sup> This goal might be achieved either by “selective (brand-specific)”<sup>69</sup> advertising, which tries to interest consumers in a particular provider, or by more categorical approaches that try to get consumers to think about an event, circumstance, or problem in a particular way. TV ads for personal-injury law firms are an example of the first approach; public service announcements exemplify the second.

Readers who watch contemporary commercial television will be familiar with advertisements for personal-injury attorneys. These ads often focus around a specific problem—a disease, an injury due to an accident, an injury caused by a medical device—and they explain to the viewer that compensation may be available for them if they have that problem, and that the advertiser may be able to provide help in getting that compensation.<sup>70</sup> In the 1980s and early 1990s, lawyers also actively advertised routine legal services used by personal clients, such as drafting wills and providing representation in uncontested divorces and bankruptcy cases.<sup>71</sup> These advertisements often included information about the price of specific services.<sup>72</sup>

Public service announcements (PSAs), by contrast, are intended to inform viewers about an issue and to make them notice the issue and think about it in a particular way. The most familiar ones in the U.S. context are perhaps those produced by the Ad Council—for example, those featuring the iconic Smokey Bear.<sup>73</sup> Ad Council PSAs have treated a range of topics,<sup>74</sup>

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68. Madeline Johnson et. al., *Attorney Advertising and Changes in the Demand for Wills*, 22 J. ADVERTISEMENT 35, 36 (1993).

69. *Id.*

70. Jerome E. Bogutz & William Hornsby, Jr., *Dignity in Lawyer Advertising: What the Survey Says*, B. LEADER (A.B.A.), July–Aug. 1990, at 15–17.

71. Nora Freeman Engstrom, *Attorney Advertising and the Contingency Fee Cost Paradox*, 65 STAN. L. REV. 633, 633 (2013).

72. *Id.* at 648–50.

73. *About Us: Effecting Positive Social Change*, AD COUNCIL, <http://www.adcouncil.org/About-Us> (last visited Aug. 28, 2015).

including, for instance, fair housing law.<sup>75</sup> The signature ad of this campaign features a white man who repeatedly calls a rental agent, inquiring about an apartment.<sup>76</sup> Each time, he uses a different name and accent that signals membership in a particular ethnic group.<sup>77</sup> Calling as a Latino, an African-American, an Indian immigrant, an Asian immigrant, and a Jewish man who uses a wheelchair, he is told each time that the apartment has been rented.<sup>78</sup> When he finally calls using an accent and a name meant to suggest a white American man, the apartment is suddenly available.<sup>79</sup> The advertisement ends by informing viewers that housing discrimination is against the law.<sup>80</sup>

The public has long been more open to lawyer advertising than lawyers have.<sup>81</sup> For example, a study from the late 1980s comparing reactions of members of both the public and the profession to ten actual lawyer advertisements found that members of the public were almost three times more likely than lawyers to respond that it was fully acceptable for lawyers to advertise under any conditions.<sup>82</sup>

Advertising can be timely, targeted, and trustworthy. It is timely because it is relentless. People are constantly peppered with messages, and some portion of them will be experiencing the relevant situation at the time they receive the message about it. Advertising can be, and is, targeted around specific problems or issues that people actually encounter—for example, the problems with a given medical device or a specific illness that TV commercials may highlight. Advertising can be trustworthy—that is the whole point of PSAs.

As with many issues in the area of access to justice, we have little systematic research on this topic.<sup>83</sup> In particular, little research exists that explores whether lawyer advertising leads people to see the targeted justice

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74. AD COUNCIL, PUBLIC SERVICE ADVERTISING THAT CHANGED A NATION (2004), *available at* <http://www.adcouncil.org/content/download/1283/11304/file/advertising-that-changed-a-nation.pdf>.

75. See The Leadership Conference Education Fund, “Accents” (Fair Housing PSA), YOUTUBE (Mar. 3, 2008), <https://www.youtube.com/watch?v=84k2iM30vbY>.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Despite the fact that lawyer advertising has been permitted for almost 40 years, the profession is still troubled over its use and impact. See, e.g., Richard J. Cebula, *Does Lawyer Advertising Adversely Influence the Image of Lawyers in the United States? An Alternative Perspective and New Empirical Evidence*, 27 J. LEGAL STUD. 503, 504–05 (1998); William E. Hornsby, Jr. & Kurt Schimmel, *Regulating Lawyer Advertising: Public Images and the Irresistible Aristotelian Impulse*, 9 GEO. J. LEGAL ETHICS 325, 325–26 (1995).

82. Bogutz & Hornsby, *supra* note 70, at 15–16.

83. See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 114–15.



situations as legal issues, or to change their behavior when they confront those situations. Some evidence exists that, if pieced together, suggests advertising can be effective in shaping the way people think about justice problems.<sup>84</sup> A study of the relationship between lawyer advertising and the purchase of wills showed an increase in the use of wills after the advent of attorney advertising in 1978.<sup>85</sup> Other research suggests that “advertising [can] conver[t] non-users of legal services to users.”<sup>86</sup> One study of brand-specific advertising even asserts that such lawyer advertising “raises the public’s esteem for the law profession.”<sup>87</sup> We need to know much more than we do about how this kind of messaging, which can serve as a form of public legal education, shapes public thinking and behavior. Nonetheless, there is potential here for bridging the gap.

## 2. *Internet-Based Services*

Internet-based services for justice problems are all the rage.<sup>88</sup> They rely on a delivery mechanism that reaches people exactly where they are and is used by more and more of the population.<sup>89</sup> The promise of the internet is to bridge gaps across space, to bring about “the nirvana of increased access at reduced price,” as two observers wryly note.<sup>90</sup> There is considerable promise here, but there are also considerable challenges.

For purposes of this discussion, let us accept that there remain basic barriers to bridging the gap with the internet. Most fundamentally, not everyone has access to the internet, nor does everyone have sufficient literacy or language facility to use the text-based media that are the staple of most internet provisions, nor does everyone want to or feel comfortable using the internet.<sup>91</sup>

According to the most recent Pew Research Center report on the topic, “15% of Americans do not use the internet at all, and another 9% of adults

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84. *Id.* at 108–09.

85. Johnson et al., *supra* note 68, at 43.

86. *Id.* at 36.

87. Cebula, *supra* note 81, at 503.

88. See ROGER SMITH & ALAN PATERSON, FACE TO FACE LEGAL SERVICES AND THEIR ALTERNATIVES: GLOBAL LESSONS FROM THE DIGITAL REVOLUTION 22 (2014), [http://www.strath.ac.uk/media/faculties/hass/law/cpls/Face\\_to\\_Face.pdf](http://www.strath.ac.uk/media/faculties/hass/law/cpls/Face_to_Face.pdf).

89. See *Internet Use Over Time*, PEW RES. CENTER, <http://www.pewinternet.org/data-trend/internet-use/internet-use-over-time> (last visited Aug. 26, 2015).

90. SMITH & PATERSON, *supra* note 88, at 22.

91. See, e.g., DONNA L. HOFFMAN & THOMAS P. NOVAK, EDUC. RES. INFO. CTR., BRIDGING THE DIGITAL DIVIDE: THE IMPACT OF RACE ON COMPUTER ACCESS AND INTERNET USE (1998); *Who’s Not Online and Why*, PEW RES. CENTER, <http://www.pewinternet.org/2013/09/25/whos-not-online-and-why> (last visited Aug. 26, 2015).

use the internet but not at home.”<sup>92</sup> These “digitally excluded” Americans are not distributed equally across the population. Reviewing recent work on the topic, Roger Smith concludes that

the digitally excluded are likely to be disproportionately represented in the population traditionally served by legal aid and other mechanisms for providing legal assistance to those on low incomes. If we assume that their rate of digital exclusion will be double that of the overall rate then we need to plan for the foreseeable future for the fact that perhaps as many as 50% of people in this group will not be assisted by Internet delivery [of legal services].<sup>93</sup>

There is a second set of challenges, though, among those who are not digitally excluded. Let us engage in a thought experiment and imagine for a moment a world where everyone has internet access and is willing and able to use the internet to access services to solve their justice problems. Important barriers remain: Most obviously, if people do not think about their justice situations in legal terms, as we saw above, they may search for information about those situations using language that does not reliably connect them with resources *targeted* to their situation. And, people can access only what content exists out there. Not all internet content related to justice situations is accurate, reliable, or easy to find or understand. While some efforts are underway to assess the quality of the legal information and other services available on-line,<sup>94</sup> they are far from comprehensive.

Just as importantly, people are not always able to distinguish good sources from bad. In a fascinating set of studies building on both survey research and experiments, Catrina Denvir and colleagues explored young adults’ use of and capacity with use of the internet to solve justice problems.<sup>95</sup> Focusing on young people is instructive because they are the age group with the highest use rates,<sup>96</sup> and they never had adult lives “before”

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92. *Who’s Not Online and Why*, PEW RES. CENTER, <http://www.pewinternet.org/2013/09/25/whos-not-online-and-why> (last visited Aug. 26, 2015).

93. ROGER SMITH, LEGAL EDUC. FOUND., *DIGITAL DELIVERY OF LEGAL SERVICES TO PEOPLE ON LOW INCOMES: THE CONTEXT* 11 (2014), available at <http://www.thelegaleducationfoundation.org/wp-content/uploads/2014/12/Digital-Delivery-Paper-2.pdf>.

94. See, e.g., ROGER SMITH, LEGAL EDUC. FOUND., *DIGITAL DELIVERY OF LEGAL SERVICES TO PEOPLE ON LOW INCOMES: COMPARING WEBSITES – MATERIAL CRITERIA* ii (2014), available at <http://www.thelegaleducationfoundation.org/wp-content/uploads/2014/12/Digital-Delivery-Paper-6.pdf>; SMITH & PATERSON, *supra* note 88, at 90–92.

95. See Catrina Denvir et al., *Surfing the Web—Recreation or Resource? Exploring How Young People in the UK Use the Internet as an Advice Portal for Problems with a Legal Dimension*, 23 *INTERACTING WITH COMPUTERS* 96, 96 (2011).

96. *Internet User Demographics*, PEW RES. CENTER (Jan. 2014), <http://www.pewinternet.org/data-trend/internet-use/latest-stats>.

the internet—the technology has been around them since their early awareness, with some calling them “digital natives.”<sup>97</sup>

The findings are sobering. In a survey of a representative sample of over 10,000 residents of England and Wales conducted between 2006 and 2009, people aged eighteen to twenty-four were less likely than those aged twenty-five to fifty-nine to use the internet to seek advice or information when faced with a justice problem; strikingly, their use patterns of the internet for this purpose looked more like those of people over sixty.<sup>98</sup> Among those eighteen to twenty-four year olds who did report using the internet to try to solve a justice problem, they seldom found what they were looking for. Over four fifths (80.3%) of this group reported looking for “information to help resolve [a] problem,” but less than a quarter (24.2%) reported finding even some of the information needed, and only 12.1% reported finding all of the information they needed.<sup>99</sup>

In another set of experiments with university students aged eighteen to twenty-four, Denvir’s colleagues gave her subjects hypothetical legal problems and asked each to answer a set of questions about the rights of the central figure in the scenario.<sup>100</sup> Half of the participants received a housing problem and half an employment problem; each group was further divided into a half that received a “hint” website that had been verified as providing accurate information to help answer the questions and a half that received no such guidance.<sup>101</sup>

The students made a range of errors. They failed to consider important jurisdictional differences, with these London college students citing U.S. websites for information about how to resolve English legal problems.<sup>102</sup> Those who received the “hint” website often ignored the hint, though they frequently found the signposted website eventually through their own searching.<sup>103</sup> They relied on search engines almost wholly: they rarely looked within the websites that the search engines returned to them. Some clearly failed to “consider the reliability of websites. This included instances where knowledge market websites such as YahooAnswers! and ehow.com were used in preference to (potentially more) reliable sources.”<sup>104</sup>

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97. Sue Bennett et al., *The ‘Digital Natives’ Debate: A Critical Review of the Evidence*, 39 BRIT. J. EDUC. TECH. 773, 776 (2008).

98. Denvir, *supra* note 95, at 99–101.

99. *Id.* at 101–02.

100. Catrina Denvir & Nigel Balmer, *Digitally (De)Faulted? How Do Young People Use the Internet to Acquire Knowledge of Their Rights?*, LAW FOR LIFE, <http://www.lawforlife.org.uk/wp-content/uploads/Cat-Denvir-YP-article.pdf> (last visited Aug. 22, 2015).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

The errors had consequences. Though their searching somewhat increased their rights knowledge as measured by a quiz, this increased knowledge did not translate into a better understanding of what someone could or should do when faced with the situation in the scenario.<sup>105</sup> These are cautionary outcomes for a population with a lot of internet experience and relatively high education. As the authors note, “problems experienced by [college students] are likely to be exacerbated for vulnerable young people.”<sup>106</sup> Providing good content is one issue; getting people to it is another. Clearly, some challenges remain on this front.

One way to meet these challenges would be to recognize the fact that, at least for the present, people using computer technology to solve a problem seem to appreciate some kind of human mediation. Among the innovations of the 1990s were computer kiosks installed in courthouses that could provide information and access to forms to people pursuing litigation without the assistance of counsel, such as unrepresented tenants in eviction matters or people pursuing a divorce without a lawyer.<sup>107</sup> A study of these kiosks found that unattended kiosks were little used, and that “the kiosks worked best when fed, watered and tendered by living people rather than just dumped and left in dark courthouse corners. As [one informant reported for his site]: ‘The kiosk that works best is . . . set up in a law library and supervised by staff.’”<sup>108</sup> Airlines, grocery stores, and libraries have clearly recognized this wisdom, as exemplified in the fact their banks of self-service kiosks used for checking into flights, purchasing beer and chips, and checking out books and videos are typically attended by one or two members of staff who can provide reassurance, answer questions, and refer people to live agents when that seems needed.

The insight that many people require human mediation to effectively use internet-based resources is incorporated into a number of contemporary web-based services through live chat. The Arkansas Legal Services Partnership incorporates a live chat function into its website.<sup>109</sup> Another example comes from the multi-organization, multi-lingual partnership CitizenshipWorks,<sup>110</sup> where one can find out about eligibility for citizenship and get help preparing for the naturalization test.<sup>111</sup> How well these human

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105. *Id.*

106. Denvir & Balmer, *supra* note 100.

107. SMITH & PATERSON, *supra* note 88, at 55–56.

108. *Id.*

109. *Legal Aid of Arkansas*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/legalaid> (last visited Aug. 22, 2015).

110. *About CitizenshipWorks*, CITIZENSHIPWORKS, <http://www.citizenshipworks.org/about> (last visited Aug. 22, 2015).

111. *See* CITIZENSHIPWORKS, <http://www.citizenshipworks.org> (last visited Aug. 22, 2015).

mediation strategies support access to justice through the small screens of cell phones has not been carefully explored. Seven percent of Americans are “smartphone-dependent” in this sense, among them a disproportionate share who are young, poor, and non-white.<sup>112</sup> Clearly, there is more here that we need to understand if we want these amazing technologies to realize their promise.

#### IV. CONCLUSION

In this brief review, we see that people understand themselves as experiencing problems—not, for example, labor law problems, or federal benefits problems, or probate problems, but problems nonetheless. They often believe that they understand these problems and what to do about them. When they seek help, they tend to turn to their social networks. Given these facts, service providers are faced with a choice about whether to rethink what they do. Some are choosing to design services around problems as people experience them, services that do not require people with problems to figure out what kind of problems they have and where to go with them. Rather, the interventions do some of this work for them, showing up when people recognize they need help (timely), providing specific, focused content that meets people’s concrete needs (targeted), and coming through a trusted means or brand (trustworthy). Research into how people actually think about, handle, and experience their problems is essential to identifying the characteristics of potentially successful interventions.

Research also is essential to figuring out whether interventions work, how they work, which work best for which populations and which problems, and which work better at what cost. After devising outreach activities, we have to assess those new strategies to see how effectively they meet the goals we have set for them. While there is a growing creative experimentation around the country, a few instances of which I have described above, there is little rigorous, independent research exploring it. Thankfully, this too is changing with the renaissance in access to justice research.<sup>113</sup> These are hopeful times, but we must work hard and thoughtfully to realize our hopes.

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112. Aaron Smith, *U.S. Smartphone Use in 2015*, PEW RES. CENTER (Apr. 1, 2015), <http://www.pewinternet.org/2015/04/01/us-smart-phone-use-in-2015>.

113. Albiston & Sandefur, *supra* note 83, at 101–02.